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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,576	03/31/2004	Arthur L. Babson	00390060AA	4328
30743	7590	12/06/2005	EXAMINER	
WHITHAM, CURTIS & CHRISTOFFERSON, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190			SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 12/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/813,576

Applicant(s)

BABSON ET AL.

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3, 6, 7, 10, 12, 13, 15, 16, 20 and 22 are rejected under 35

U.S.C. 102(e) as being anticipated by Gazeau et al. (US 6,837,843). Regarding claim

1, Gazeau ('843) discloses an agitator assembly comprising a conveyor element (11)

which holds a plurality of vessels, said conveyor element being movable along a path;

and a vessel agitator (16) positioned adjacent said conveyor element at a location along

said path where said plurality of vessels contact said vessel agitator as said conveyor

element moves along said path. Regarding claim 2, said agitator includes a plurality of

troughs and projections, whereby each of said plurality of vessels are caused to move in

direction generally perpendicular to said path by said plurality of troughs and

projections. Regarding claim 3, the agitator is made from more than one component

(see Fig. 2). Regarding claims 6 and 7, the distance between adjacent projections and

between adjacent troughs is uniform (see Fig. 2). Regarding claim 10, the depth of

troughs of said agitator is uniform (see Fig. 2). Regarding claim 12, the distance said

projections project toward said vessel agitator relative to said conveyor is uniform (see

Art Unit: 1723

Fig. 2). Regarding claim 13, the vessel agitator is stationary (see Fig. 2). Regarding claim 15, said path has one or more turns (see Fig. 2). Regarding claim 16, the assembly has means for allowing the conveyor to follow a path which is nonlinear. Regarding claim 20, this claim only discuss an analyzer with is not part of the claimed structure. Regarding claim 22, Gazeau ('843) discloses a method of passively agitating vessels in a chemical analyzer, comprising the steps of conveying one or more vessel (1) held in a conveyor element (11) along a path; and agitating said vessels with a vessel agitator (16) positioned adjacent said conveyor element at a location along said path where said plurality of vessels (1) contact said stationary agitator as said conveyor element moves along said path.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 5, 8, 9, 11, 14, 17-19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gazeau et al. (US 6,837,843). The assembly of Gazeau ('843) was discussed above. Regarding claims 4, 5, 8, 9, 11 and 14, while the reference does not expressly disclose varying the parameters mentioned in these claims, the discussion of "variable amplitude" in col. 2, lines 63 and col. 3 line 3 would have suggested these variations to one of ordinary skill in the art. Regarding claims 17-19 and 21, phrases such as "Incubation is performed at 50 °C for 3 to 4 hours with

Art Unit: 1723

occasional agitation" (col. 3, lines 45-46) and "All of these steps are performed in the equipment according to the invention without removing the tubes (1) from the rotor (11)" (col. 3, lines 53-55) would have suggested housing the conveyor and agitator in an incubator.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 10/813,576

Page 5

Art Unit: 1723


David L. Sorkin
Primary Examiner
Art Unit 1723

DLS